

1 STATE OF NEW HAMPSHIRE

2 SITE EVALUATION COMMITTEE

3 June 16, 2008 - 11:26 a.m.  
 4 N.H. Public Utilities Commission  
 21 South Fruit Street, Suite 10  
 Concord, New Hampshire

6 In re: SITE EVALUATION COMMITTEE:  
 Docket No. 2008-004 & 2008-005:  
 7 Public meeting regarding the Amended  
 Final Proposal of the Site 100  
 8 Organizational rules and the Site 200  
 Practice and Procedure Rules and the  
 9 Site 300 Certificates of Site and  
 Facility Rules.  
 10 SITE EVALUATION COMMITTEE:  
 Docket No. 2008-002: Application of  
 11 Tennessee Gas Pipeline Co. for a  
 Certificate of Site and Facility for  
 12 the Concord Lateral Expansion Project.  
 (Hearing to conduct a preliminary review  
 13 of the Application.)

14 PRESENT: SITE EVALUATION COMMITTEE:  
 15 Thomas S. Burack, Cmsr. Dept. of Environmental Services  
 (Chairman of SEC - Presiding Officer)  
 16 Thomas B. Getz, Chrmn. Public Utilities Commission  
 17 (Vice Chairman of SEC)  
 18 Graham J. Morrison, Cmsr. Public Utilities Commission  
 Clifton C. Below, Cmsr. Public Utilities Commission  
 19 Harry T. Stewart, Dir. DES - Water Division  
 Amy L. Ignatius, Dir. Office of Energy & Planning  
 20 Philip Bryce, Dir. Div. of Forests & Lands (DRED)  
 Brook Dupee Dept. of Health & Human Services  
 21 Randall Knepper Public Utilities Commission

22

23

24 COURT REPORTER: Steven E. Patnaude, LCR No. 52

1  
2 ALSO PRESENT: Michael Iacopino, Esq.  
3 Counsel for the Committee  
4  
5 Cedric Dustin  
6 Administrator for the Committee  
7  
8 Peter C. L. Roth, Esq.  
9 Senior Assistant Attorney General  
10  
11 N.H. Dept. of Justice  
12 Counsel for the Public  
13  
14 Suzanne G. Amidon, Esq. (N.H. PUC)  
15  
16 Reptg. Tennessee Gas Pipeline Co.:  
17 Donald Pfundstein, Esq. (Gallagher...)  
18  
19  
20  
21  
22  
23  
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2

## I N D E X

3

PAGE NO.

4

RE: AGENDA ITEM NO. 1

5

Statement by Cmsr. Below

9, 53

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Motion by Cmsr. Below Re:  
Site 100 Organizational Rules

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Second by Dir. Bryce

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VOTE Re: Site 100 Rules

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Motion by Cmsr. Below to  
Amend Final Proposal Re:  
Site 200 and Site 300 Rules

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Second by Dir. Ignatius

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VOTE Re: Site 200 Rules  
and Site 300 Rules

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14

Motion by Cmsr. Below to  
Adopt the Amended Final  
Proposal on the Site 100,  
Site 200 and Site 300 rules

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Second by Mr. Stewart

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VOTE on motion

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RE: AGENDA ITEM NO. 2

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Motion by Vice Chairman Getz  
to designate Randall Knepper  
as PUC Staff Engineer for  
purposes of 2008-002

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Second by Cmsr. Morrison

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Concurrence by Cmsr. Below

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2 Page No.

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11 for the Committee to carry out  
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14 VOTE on motion 27

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1 P R O C E E D I N G S

2 CHAIRMAN BURACK: Good afternoon, ladies  
3 and gentlemen. We are here today for a public meeting and  
4 hearing of the New Hampshire Site Evaluation Committee.  
5 As many of you already know, this Committee is established  
6 by RSA 162-H. The membership of this Committee includes  
7 the Commissioners or Directors of a number of state  
8 agencies, as well as specified key personnel from various  
9 state agencies. At this point, I would like to have the  
10 members of the Committee introduce themselves. For the  
11 record, my name is Tom Burack, and I serve as Commissioner  
12 of the Department of Environmental Services, and in that  
13 capacity also as Chairman of the Site Evaluation  
14 Committee.

15 Why don't we start with Mr. Dupee over  
16 here.

17 MR. DUPEE: Good afternoon. I'm Brook  
18 Dupee, with the Department of Health & Human Services.

19 DIR. BRYCE: Philip Bryce, Director of  
20 Forests & Lands in the Department of Resources & Economic  
21 Development.

22 DIR. STEWART: Harry Stewart, Department  
23 of Environmental Services, Water Division Director.

24 CMSR. BELOW: Clifton Below, Public

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1 Utilities Commissioner.

2 VICE CHAIRMAN GETZ: Tom Getz, Chairman  
3 of the Public Utilities Commission and Vice Chair of this  
4 Committee.

5 CMSR. MORRISON: Graham Morrison, Public  
6 Utility Commissioner.

7 MR. KNEPPER: Randy Knepper. I'm the  
8 Director of the Safety Division of the Public Utilities  
9 Commission.

10 DIR. IGNATIUS: Amy Ignatius, Director  
11 of the Office of Energy & Planning.

12 CHAIRMAN BURACK: I also understand,  
13 although not necessarily pertinent to the first part we're  
14 going to take up, that Attorney Peter Roth, from the  
15 Attorney General's Office, is here, I believe, to serve in  
16 connection with the Tennessee Gas matter. Also, to my  
17 immediate right is Attorney Michael Iacopino, who serves  
18 as legal counsel to the Committee with respect to the  
19 Tennessee Gas matter.

20 The agenda for today's public meeting  
21 includes two items. The first item on today's agenda is a  
22 rulemaking proceeding in which we will consider whether or  
23 not to amend our Final Proposal for Organizational and  
24 Procedural Administrative Rules, designated as Site 100,

{SEC No. 2008-002, et al} (06-16-08)

1     Site 200, and Site 300. The Joint Legislative Committee  
2     on Administrative Rules, also known at "JLCAR", has  
3     conditionally approved these rules subject to final  
4     amendment. We will decide whether to amend the rules in a  
5     manner consistent with the JLCAR conditional approval. If  
6     we do make such amendments to the new Amended Final  
7     Proposal, these will be immediately delivered to JLCAR's  
8     counsel for review. We will then recess this portion of  
9     the meeting on the proposed rules and proceed with our  
10    second agenda item. It is our hope and expectation that  
11    we will hear from the Office of Legislative Services later  
12    this afternoon before we adjourn this meeting.

13                   Accordingly, if we vote to amend the  
14    rules, and the Office of Legislative Services notifies us  
15    in writing that the rules have been properly amended, we  
16    will then proceed to consider whether to finally adopt the  
17    rules. The final adoption of the rules will occur if we  
18    have the final approval from the Office of Legislative  
19    Services and time permits after consideration of our  
20    second agenda item.

21                   Our second agenda item concerns the  
22    Application of Tennessee Gas Pipeline Company for a  
23    Certificate of Site and Facility for the Concord Lateral  
24    Expansion Project. We will hold a meeting to conduct a

1 preliminary review of the Application and determine  
2 whether the Application contains sufficient information  
3 for the Committee to carry out the purposes of RSA 162-H,  
4 as required by RSA 162-H, Section 6, II, and RSA 162-H,  
5 Section 7, III. We will also determine whether or not to  
6 accept said Application as required by RSA 162-H, Section  
7 6, III. Additionally, in the event that the Committee  
8 accepts the Application, the Committee may consider the  
9 issuance of a procedural schedule.

10 At this point, we will proceed with our  
11 first agenda item. Again, this is Amendment of Proposed  
12 Final Organizational and Procedural Rules. The Committee  
13 has submitted Proposed Final Organizational and Procedural  
14 Rules to the JLCAR. JLCAR, after consideration of the  
15 proposal, has issued a conditional approval of the  
16 proposal. The conditional approval requires certain  
17 amendments to the rules. It is my understanding that all  
18 members of the Committee have received the conditional  
19 approvals from the Office of Legislative Services. And,  
20 I'm now going to turn things over to Clifton Below, one of  
21 the members -- Commissioners of the Public Utilities  
22 Commission who has been working with Tom Getz, Chair of  
23 the Public Utilities Commission, on these rules on behalf  
24 of the Committee.



1 CMSR. BELOW: Thank you. As the members  
2 will recall, perhaps at our last meeting, we voted to make  
3 a Final Proposal for our Site 100, 200, and 300 rules, our  
4 Organizational and Procedural Rules. And, part of the  
5 process, as people may know, is that the staff, the legal  
6 counsel for JLCAR annotates the proposed rules with  
7 potential bases for objection for the Committee. And,  
8 after consulting with the Chair and Vice Chair, and some  
9 others, we, primarily Tom Getz and I and Suzanne Amidon,  
10 who is the attorney here at the PUC who has been working  
11 on this, we went through and tried to make as many --  
12 tried to address as many of those potential bases for  
13 objections as we could, many of which were editorial, a  
14 few of which were a bit more substantive. Some of the  
15 bigger substantive ones we didn't feel that we could do,  
16 particularly without consulting with the full Committee,  
17 so we didn't. But we went and presented that and we  
18 argued for adopting -- or, for approving the conditional  
19 -- the rules, or giving the conditional approval as we  
20 submitted it. And, after over an hour of questions and  
21 discussion with the Committee, they did vote to give their  
22 conditional approval in precisely the manner that we had  
23 submitted it, without any additional conditions or  
24 requirements.

1                   So, that's what's before us. And, I  
2     just want to kind of quickly walk through some of those  
3     before making a motion, just so everybody sees what we've  
4     done. If, for some reason, the Committee should choose  
5     not to amend the Final Proposal consistent with the  
6     conditional approval, then the whole rule would  
7     automatically fault to a preliminary objection, and then  
8     we could still address everything in a different way if we  
9     wanted.

10                   So, in your packet, it starts off with  
11     the 100 rules, our Organizational Rules. And, there was  
12     some tweaking of some of the definitions. They're fairly  
13     straightforward, except, when we get into the petition, I  
14     think there was some concern about how we define  
15     "petition" as being a bit confusing under 102.13. And, we  
16     clarified it so that "petitioner" means one of two things.  
17     It's the "petitioner" as is defined in RSA 162-H:2, which  
18     is a person filing a petition that requests us to take  
19     jurisdiction of a project, like happened in Lempster, when  
20     it's a petition by 100 or more registered voters in a host  
21     community and so forth, certain other things. And, the  
22     other form of "petitioner" is someone who files a petition  
23     for intervention. And, we had a broader definition of it,  
24     but that's, for purposes of our rules, it will only mean

1       one of those two things.

2                       At the bottom of Page 3, the Conditional  
3       Approval Request - Annotated, there's a slight change in  
4       the definition of "transmission line", which is not  
5       actually defined in RSA 162-H, but it is described. It's  
6       sort of an indirect definition. And, there's pending  
7       legislation that's passed both the House and the Senate,  
8       which is attached to this, which changes that definition.  
9       It's sort of on the back of that one part of the packet  
10      that would include any electric transmission line with a  
11      design rating in excess of 115 kilowatts would  
12      automatically become a type of transmission line that  
13      would be subject to the jurisdiction. And, so that we  
14      said "and (d)" in that, so that anticipates that becoming  
15      law. If it doesn't, then it's referring to something that  
16      won't exist in the statute.

17                      And, on Page 5 there was some -- well,  
18      we didn't make a change there, but I'll just point it out,  
19      that there was some concern by the Committee about our  
20      proposed rule about Staff supporting -- support being  
21      provided by the Administrative Assistant to the  
22      Commissioner of the Department of Environmental Services  
23      that was oddly enough became a point of controversy for  
24      about 20 minutes. But, ultimately, they thought that was

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1       okay, particularly since the next sentence says that we  
2       can retain additional administrative, technical, and legal  
3       assistance. This kind of comes up because the SEC is not  
4       administratively attached to any particular agency.

5                       So, that's it on Organizational Rules.

6       And, maybe I'll just do this motion, do it in two parts.

7       And, so, I'll make a motion that we amend our Final

8       Proposal 2008-004, consistent with the conditional

9       approval granted by the Joint Legislative Committee on

10      Administrative Rules on -- at its June 6th, 2008 meeting.

11                      CHAIRMAN BURACK: There's a motion. Is  
12      there a second to that motion?

13                      DIR. BRYCE: Second.

14                      CHAIRMAN BURACK: Second by Mr. Bryce.

15      Discussion of the motion?

16                      (No verbal response)

17                      CHAIRMAN BURACK: Hearing none, are we  
18      ready for a vote? All in favor of the motion, please  
19      signify by saying "aye".

20                      (Multiple members indicating "aye".)

21                      CHAIRMAN BURACK: Opposed?

22                      (No verbal response)

23                      CHAIRMAN BURACK: Abstentions?

24                      (No verbal response)

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1                   CHAIRMAN BURACK: Thank you. The motion  
2 carries. And, I will note for the record that we do have  
3 a quorum present to be able to take this vote.  
4 Commissioner Below.

5                   CMSR. BELOW: The next part is our  
6 Procedural Rules and Application Rules, Site 200 and Site  
7 300. And, I think there's more substantive changes here,  
8 largely along the lines of clarifying and, in some cases,  
9 elaborating. The first one happens with public  
10 information hearings. There was a concern about what  
11 procedures would be used at public information hearings,  
12 and the fact that our original rules didn't address the  
13 fact that other representatives of other agencies were  
14 also supposed to be included in those hearings. So, we  
15 added language to that effect. We looked at some other  
16 rules from other agencies and added language, all the  
17 underlying language that you see on Page 1 of the  
18 Conditional Approval Request Annotated, including the  
19 language about that "the presiding officer at a public  
20 information hearing shall require persons desiring to make  
21 comments to so indicate by signing a roster", and  
22 "enabling the presiding officer to limit the time to allow  
23 all persons with comments to make", and that kind of  
24 language.

1                   On Page 4, there's just a little  
2       clarification of petition to intervene. And, there's a  
3       note that says -- it's an editorial comment, which says  
4       "may" indicates permission or an option change to "might  
5       be affected". That we didn't do that in the initial  
6       approval request, but I suggest we go ahead and change  
7       that to "might be affected", which is something that can  
8       be done at any time.

9                   And, the other significant thing is on  
10      Page 9. And, there was a potential basis for objection on  
11      202.28, on "Issuance or Denial of Certificate", (b), that  
12      says "The Committee shall keep an order and filings  
13      related to an application on file in its public records  
14      for at least 50 years", was the original proposal,  
15      "following the date of the final order on any appeal."  
16      And, the potential basis for objection was that our fiscal  
17      note was originally based on five years. And,  
18      potentially, counsel for JLCAR raised the question whether  
19      requiring them to be retained for 50 years might actually  
20      have a fiscal impact, which wasn't recognized in the  
21      original fiscal impact statement. So, we somewhat  
22      randomly chose ten years as something that arguably wasn't  
23      so much more than five years that would have a fiscal  
24      impact. This does say "at least". I think we had changed

1       it between the Initial Proposal and the Final Proposal  
2       from 5 to 50, because of the sense that these are things  
3       that we do need to keep around since they're not published  
4       anywhere. And, I guess my sense is probably they probably  
5       should still be kept for a good bit more than ten years,  
6       but it got rid of the potential basis for objection.

7                       So, DES will be in possession of these,  
8       and they can just keep a note "keep indefinitely", if need  
9       be. But this was also a huge subject matter of discussion  
10      with folks saying "well, they should be kept  
11      electronically, they should be" -- but it got into a lot  
12      of questions about what Archives does that are outside of  
13      our rules.

14                     I think that's sort of it, in terms of  
15      the substantive things. It does, on Page 11, we added  
16      language, because it was unclear before, and I guess  
17      counsel still thought it was unclear, if we were to deny  
18      or grant a declaratory ruling what the basis for it would  
19      be. And, since we've never really had to do that, we just  
20      kind of made up language elaborating that said "when we  
21      rule, either granting or denying a motion for a  
22      declaratory ruling, that it would include an explanation  
23      of the factual or legal basis for granting or denying such  
24      motion." And, they accepted our argument that that's sort

1 of the best we can do. We'd explain why, and if somebody  
2 had a problem with that they could appeal, and we'd have  
3 explained the factual and legal basis. And, we'll  
4 underline the two parts that we were supposed to  
5 editorially.

6 In the Application Rules, which are the  
7 Site 300, they came close, just to let you know, they came  
8 close to voting to recommend additional rulemaking for us  
9 to provide more criteria, more detail on some of these,  
10 what was going to be required in the application and what  
11 the basis for our decision would be. But, ultimately,  
12 they backed down from that and felt -- I think we  
13 persuaded them that just getting these rules in place was  
14 a huge progress, and, after some experience, if we felt --  
15 if folks felt we needed to elaborate on some of that, that  
16 that could be considered in the future.

17 And, the final thing I'll point out is  
18 at the bottom of Page 20, there's a whole new section on  
19 "Waiver of Rules". That's really because there's a Waiver  
20 of Rules in the 200 rules, and there's a separate -- and  
21 we just duplicated the language in the 300 rules, because  
22 one set expires at one point in time and the other doesn't  
23 expire. And, the way we had the rule written didn't  
24 really work, the Waiver of Rules would have expired. This



1 way they kind of stick with the chapter they go with. In  
2 the chapter that doesn't expire, the Waiver of Rules  
3 doesn't expire. In the chapter that does, they will at  
4 the same time.

5 So, that's it. And, I will move that  
6 the Site Evaluation Committee amend its Final Proposal,  
7 2008-005, for the Site 200 and Site 300 rules, in a manner  
8 consistent with the Joint Legislative Committee on  
9 Administrative Rules conditional approval of June 6th,  
10 including the couple of editorial changes that I noted.

11 CHAIRMAN BURACK: There's a motion. Is  
12 there a second to the motion?

13 DIR. IGNATIUS: Second.

14 CHAIRMAN BURACK: Second by Ms.  
15 Ignatius. Is there any discussion of the motion?

16 (No verbal response)

17 CHAIRMAN BURACK: Hearing none, all in  
18 favor, please signify by saying "aye"?

19 (Multiple members indicating "aye".)

20 CHAIRMAN BURACK: Opposed?

21 (No verbal response)

22 CHAIRMAN BURACK: Abstentions?

23 (No verbal response)

24 CHAIRMAN BURACK: Very good. The motion

1 carries. Thank you. Mr. Getz.

2 VICE CHAIRMAN GETZ: I just wanted to  
3 say one thing in regard to this. I wanted to recognize  
4 Commissioner Below's efforts and Suzanne Amidon's efforts.  
5 Getting rules through JLCAR is a complicated,  
6 detail-driven process. And, those last few yards over the  
7 goal line are sometimes the hardest, and I think they did  
8 a great job in getting that done.

9 CMSR. BELOW: Thank you.

10 CHAIRMAN BURACK: Thank you. I think we  
11 all say "thank you" to Commissioner Below and to Suzanne  
12 Amidon and everybody who's played a role in helping to  
13 bring these together. I think a number of people spent  
14 many hours working on this, and it's much appreciated.  
15 And, clearly, it's going to be important as we move  
16 forward with many, many matters in the future.

17 Okay. We are now going to move onto  
18 Agenda Item Number 2, recognizing that, if everything  
19 works out right, we're hoping to have something back from  
20 the Office of Legislative Services before we adjourn this  
21 meeting today, so that we can, in fact, adopt Final Rules  
22 here.

23 So, we're going to move now to Agenda  
24 Item Number 2. This is Docket Number 2008-002, regarding

{SEC No. 2008-002, et al} (06-16-08)

1 Application of Tennessee Gas Pipeline Company for a  
2 Certificate of Site and Facility for the Concord Lateral  
3 Expansion Project. On April 22, 2008 Tennessee Gas  
4 Pipeline Company, also known to us here as "Applicant",  
5 filed an Application for Site and Facility for the Concord  
6 Lateral Expansion Project, otherwise known now as the  
7 "Application". The Application seeks a Certificate of  
8 Site and Facility, which we will refer to as a  
9 "Certificate", for the construction and operation of an  
10 energy facility in Pelham, Hillsborough County, New  
11 Hampshire, consisting of a new 6,130 horsepower  
12 compression station on the Applicant's line 200 system,  
13 known as the "Concord Lateral System", we'll refer to it  
14 here as "Lateral", in Pelham, New Hampshire. The  
15 construction and operation of the compressor will allow  
16 the Applicant to provide an incremental 30,000 decatherms  
17 per day of capacity to EnergyNorth. The Application for a  
18 Certificate of Site and Facility also seeks approval of  
19 certain upgrades at the Applicant's existing Laconia Meter  
20 Station, which is located in Concord, Merrimack County,  
21 New Hampshire, with piping modifications to accommodate  
22 the aforementioned additional capacity.

23 Our purpose today is to conduct a  
24 preliminary review of the Application and determine

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1       whether the Application contains sufficient information  
2       for the Committee to carry out the purposes of RSA 162-H,  
3       as required by RSA 162-H, Section 6, II, and RSA 162-H,  
4       Section 7, III. We will also determine whether or not to  
5       accept said Application as required by RSA 162-H, Section  
6       6, III. Additionally, in the event that the Committee  
7       accepts the Application, we will consider the issuance of  
8       a procedural schedule.

9                       As I indicated before, Senior Assistant  
10       Attorney General Peter Roth has been appointed as Counsel  
11       to the Public in this matter, and we will enter his  
12       appearance in the record. Additionally, we have received  
13       correspondence from the Air Resources Division and the  
14       Water Division of the Department of Environmental  
15       Services. The Air Resources Division reports that the  
16       Applicant has supplied sufficient information in the  
17       Application to allow the Division to proceed in processing  
18       that Application. Similarly, the Water Division indicates  
19       that there is sufficient information contained within the  
20       Application for both the Alteration of Terrain Permit and  
21       the Onsite Wastewater Permit, again, to enable them to  
22       continue to process those applications. I should also  
23       note that we have received an affidavit of publication  
24       from Attorney Pfundstein, counsel for Tennessee Gas

1 Pipeline Company, indicating that the notice, the order  
2 and notice of public meeting that was issued on May 23rd,  
3 2008 was published on June 2nd, 2008 in the Union Leader,  
4 the Concord Monitor, and the Telegraph.

5 So, at this time, I will open the floor  
6 to discussion and preliminary review of the Application.  
7 Is there any discussion?

8 VICE CHAIRMAN GETZ: Well, actually,  
9 before we go to that discussion, I'll take care of one  
10 administrative matter.

11 CHAIRMAN BURACK: Of course.

12 VICE CHAIRMAN GETZ: And, that goes to  
13 RSA 162-H:3, concerns the composition of the Site  
14 Evaluation Committee, and the practices in each docket  
15 that the Commission can designate a Staff engineer from  
16 the Commission to be a member of the Committee. And, so,  
17 this is a motion for the three Public Utilities  
18 Commissioners, that I would move that we designate Randy  
19 Knepper, who is an engineer and who is the Commission's  
20 Director of the Safety Division, I move that we designate  
21 him as a member of the Committee for purposes of  
22 consideration of the Tennessee Gas Pipeline Application.

23 CMSR. MORRISON: I second.

24 CMSR. BELOW: And, I concur.

1                   VICE CHAIRMAN GETZ: Okay. And, I'll  
2       note for the record that Mr. Knepper is so designated.  
3       Thank you.

4                   CHAIRMAN BURACK: Very good. Thank you  
5       very much, Chairman Getz. Okay. We will now have a  
6       discussion and preliminary review of the Application. Is  
7       there any discussion?

8                   MR. IACOPINO: Mr. Chairman, I would  
9       point out that sometime ago I sent correspondence as  
10      Counsel to the Committee to all of the agencies that are  
11      represented on the Committee, and as well as the Town of  
12      Pelham, the City of Concord, the Nashua Regional Planning  
13      Commission, and the -- I think the Central New Hampshire  
14      Planning Commission, advising them of this hearing  
15      upcoming, and to advise them that, if they had any  
16      problems with the completeness of the Application, that  
17      they could, you know, notify us, preferably in writing. I  
18      have not received any indication from any state agency  
19      that's affected or from any of the other agencies that  
20      I've mentioned indicating that the Application does not  
21      provide sufficient information. Also, each member of the  
22      Committee should have before it a letter that Mr. Stewart  
23      dropped off for us today from June 3, 2008 on the  
24      Alteration of Terrain Permit from the Water Division,

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1     indicating that -- just requesting some more information.  
2     But we did receive correspondence from the Water Division  
3     indicating that this Application has sufficient  
4     information to provide, as far as their purposes are.  
5     And, if anybody needs a copy of that letter from  
6     Mr. Tardiff of the Department of Environmental Services.

7                     And, finally, as everybody is aware, we  
8     also received correspondence from the Air Division  
9     indicating that the Application contains sufficient  
10    information for their purposes as well.

11                    So, as counsel, I have not been able to  
12    identify any other agency that has any statutory  
13    jurisdiction to grant or deny a permit or license with  
14    respect to the project as described in the Application.  
15    And, also, I would note that there is apparently no  
16    wetlands impact arising from this Application. For  
17    informational purposes, I just want you to all know that.

18                    CHAIRMAN BURACK: Mr. Stewart, did you  
19    wish to say something further?

20                    DIR. STEWART: Well, I was going to  
21    mention that also, that there is no wetlands permit  
22    required for this project. As Attorney Iacopino  
23    indicated, we did provide some technical comments through  
24    a letter June 3rd on the Terrain Alteration Permit

1     Application.  And, they are technical comments.  There's  
2     nothing really insurmountable, I believe, in these  
3     comments.

4                     The third aspect is an Onsite Wastewater  
5     System Application, and that actually got out ahead of  
6     everything, and it has been approved by the Department.  
7     Now, that ultimately gets folded into the EFSEC process,  
8     but it -- so, the onsite subsurface system was also  
9     acceptable.

10                    CHAIRMAN BURACK:  Mr. Getz.

11                    VICE CHAIRMAN GETZ:  Thank you, Mr.  
12     Chairman.  There's two issues I wanted to.  The first is I  
13     wanted to ask a question to counsel, to make sure that I'm  
14     interpreting the filing correctly.  And, then, I wanted  
15     to, after that, address the Application itself.  But, for  
16     Mr. Iacopino, my understanding, in terms of the  
17     definitions under 162-H, that this would be a energy  
18     facility, and not a bulk power facility under the statute,  
19     is that --

20                    MR. IACOPINO:  That is my understanding,  
21     yes.

22                    VICE CHAIRMAN GETZ:  And, then, as a  
23     result then that there would be no requirement for the  
24     Public Utilities Commission to make a separate finding

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1 with respect to this Application?

2 MR. IACOPINO: Yes, I agree.

3 VICE CHAIRMAN GETZ: And, the second  
4 would be in terms of a general question raised by the  
5 Chair. In looking at the Application, as I read 162-H:6,  
6 II, "Upon the filing of Application, the Committee must  
7 consider -- ascertain if the Application contains  
8 sufficient information to carry out the purposes of the  
9 chapter". And, the way I understand that would be is to  
10 look at 162-H:16, which requires, among other things,  
11 whether available alternatives have been considered, and  
12 then whether there's information to determine whether  
13 there's adequate financial, technical and managerial  
14 capability, whether it will not unduly interfere with the  
15 orderly development of the region, whether the project  
16 will not have an unreasonable adverse effect on a number  
17 of aspects considered, including esthetics and historic  
18 sites, and whether the pipeline is consistent with the  
19 state energy policy. And, it looks like the Application  
20 -- that the Applicant has addressed those issues  
21 specifically in their attachment to the cover letter, what  
22 they call an "Executive Summary". And, they also lay out  
23 some alternatives in that package as well.

24 And, my understanding of what we're

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1       required to do is that they -- have they spoken to these  
2       issues. We're not required to, at this point, determine  
3       whether they have met their burden of satisfying the  
4       statutory requirements. So, in terms of the Application,  
5       it appears, from my perspective, that the Application is  
6       complete for our purposes.

7                       CHAIRMAN BURACK: Thank you. Is there  
8       other discussion or comment on this issue of whether the  
9       Application is or is not complete as submitted?

10                      (No verbal response)

11                      CHAIRMAN BURACK: Nothing else?

12                      (No verbal response)

13                      CHAIRMAN BURACK: Okay. Are we ready  
14       then for a vote to accept the Application as submitted for  
15       purposes of I believe it would be RSA 162-H, Section 6,  
16       III?

17                      MR. IACOPINO: Mr. Chairman, I would  
18       just -- I would recommend to the Committee that any motion  
19       is structured in such a way that it gives you the  
20       authority to sign an order accepting the -- if somebody  
21       makes this motion, that they make it in such a format  
22       giving you the authority to sign an order, so that we  
23       don't have to get everybody on the Committee to sign as  
24       well.

1 VICE CHAIRMAN GETZ: Would it make sense  
2 to do that in two separate motions?

3 MR. IACOPINO: Probably, but I just  
4 wanted to, before we forget, just get that out there.

5 VICE CHAIRMAN GETZ: Well, I'm prepared  
6 to make the first motion, that I move that the Committee  
7 find that the Application contains sufficient information  
8 for the Committee to carry out the purposes of 162-H.

9 CHAIRMAN BURACK: Is there a second to  
10 that motion?

11 DIR. STEWART: I'll second.

12 CHAIRMAN BURACK: Second by Mr. Stewart.  
13 Is there any discussion of the motion?

14 (No verbal response)

15 CHAIRMAN BURACK: Hearing none, all in  
16 favor?

17 (Multiple members indicating "aye".)

18 CHAIRMAN BURACK: Any opposed?

19 (No verbal response)

20 CHAIRMAN BURACK: Any abstentions?

21 (No verbal response)

22 CHAIRMAN BURACK: Very good. Thank you.  
23 The motion carries. Okay. I think if, now that we have  
24 accepted the motion or accepted the Application as

1 complete, we next should discuss a procedural schedule for  
2 the processing of this, of this Application. Counsel has  
3 prepared, based on just the statutory timelines that are  
4 essentially set out in the statute, a suggested potential  
5 schedule. Do you want to walk us through this, counsel?

6 MR. IACOPINO: Yes. Let me address the  
7 dates that are on the outline that I've provided to you,  
8 and it says "confidential" on the top, but anybody who is  
9 here is certainly welcome to have a copy of it so they  
10 know what we're talking about, but, as the Chairman said,  
11 are essentially based on the statutory requirements. Our  
12 statutory requirements essentially begin upon the issuance  
13 of the order of acceptance. And, the first thing that we  
14 have to do is hold the public informational hearings, and  
15 that's actually our tightest window as a Committee,  
16 because they have to be held within 30 days of acceptance,  
17 which puts us out to July -- the week of July 14th to the  
18 18th, and we also have to give 14 days notice by  
19 publication. So, we have to have a notice out essentially  
20 the beginning of July in the newspapers in order to do  
21 that. Right now, as you all know, I've been in touch with  
22 virtually all of you, and it appears that Thursday,  
23 July 17th, is the day that most members of the Committee,  
24 in fact, I believe all that have responded to me, are

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1     available. What we were hoping to do on that date is to  
2     take care of a public -- we have to do a public  
3     informational hearing in each county. What I was hoping  
4     to do is to schedule that to do both of the -- since this  
5     project affects two counties, Hillsborough and Merrimack,  
6     that we would hold a public informational hearing in each  
  
7     one of those counties on that day. And, the way that I  
8     would propose that we do it -- well, let me back up a  
9     little bit. It's also been traditional for the Committee  
10    to actually go and visit the sites where the construction  
11    will take place. And, in this particular case, there's a  
12    facility that's already in existence on Broken Bridge Road  
13    in Concord, and the other facility is down in Pelham, New  
14    Hampshire, where the new compressor will be built. My  
15    suggestion would be that at approximately 10:00 in the  
16    morning we do the site visit in Concord, and repair back  
  
17    to here to do the public informational hearing in the  
18    morning in Concord.

19                   I understand that a daytime hearing is  
20    not optimal for most residents of, you know, who have to  
21    go to work. However, that particular -- the portion of  
22    the facility which is in Merrimack County is in an already  
23    existing facility. And, I can't imagine that it will  
24    yield too much controversy. And, there's also nothing

1       that prohibits anybody who wants to talk about the  
2       Merrimack portion of the facility from also attending the  
3       meeting in Pelham.

4                       After having the public informational  
5       hearing -- meeting here, we would then hopefully take a  
6       break so that everyone can get back to their office and  
7       maybe answer some phone calls and take care of a little be  
8       bit of your day jobs, and then proceed down to Pelham for  
9       the site visit in Pelham at approximately 3:30. And,  
10      then, from there, after the site visit, we will get dinner  
11      and then proceed with the procedural informational -- the  
12      informational hearing at approximately 7:00 p.m. in the  
13      evening in Pelham. I think that by doing that we  
14      accomplish that anybody who has either evening problems or  
15      morning problems from the public who want to make a  
16      statement to the Committee can get there by going to one  
17      or the other of the hearings. And, I think that's the  
18      best way to deal with that particular issue. And, that is  
19      our tightest time frame.

20                      We actually issued an intervention  
21      deadline for today. As far as I know, we have not heard  
22      from anybody seeking to intervene in this proceeding.  
23      However, as we all know, that RSA 541-A has its own  
24      deadline for intervention, which is three days before a

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1     hearing. But, nonetheless, I have not heard from anybody  
2     expressing any interest in intervening. It does not  
3     appear as though, at least as far as we have heard so far,  
4     that we are going to have at least many intervenors, if  
5     any. So, the deadlines that are required by the statute,  
6     assuming that the state agencies can do their job  
7     relatively quickly, could be compressed, if, in fact, that  
8     is what you all as members of the Committee want to do.

9                     If we go out to the entire nine months,  
10    as the statute allows, that brings us to the middle or the  
11    end of March of 2009. But I will leave that up to you all  
12    as a Committee in terms of whether you want to compress  
13    the timeframes in this particular docket or not.

14                    I would point out that normally we have  
15    the adjudicatory hearings after we have received draft  
16    conditions and draft permits from the state agencies.  
17    They're permitted five months from the date of acceptance  
18    to provide those. That would roughly be November 20th,  
19    2008. Traditionally, it's been our custom to hold the  
20    adjudicatory hearings after we've received those, and  
21    before, obviously, the final conditions and permits are  
22    required from the state agencies.

23                    So, that's why those dates,  
24    November 20th through February 20th, are contained in the

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1 outline. If there are not any intervenors, and I don't  
2 know what position the Public Counsel will take with  
3 respect to the application, but, if we just have two  
4 parties involved, that, obviously, makes it less complex  
5 than we have had in the past with various parties involved  
6 taking various positions on different issues.

7 So, I'll just throw that out for you all  
8 as a Committee to consider. And, of course, I think that  
9 we probably ought to hear from the Applicant and Public  
10 Counsel with respect to their input as to time frame.

11 CHAIRMAN BURACK: And, I don't know  
12 whether there would be any input from Department of  
13 Environmental Services. I will note that Craig Wright,  
14 from DES Air Resources Division Assistant Director there  
15 is also present here today. Perhaps we should start by  
16 hearing from the Department, in terms of what you think  
17 might be processing time frames for these applications,  
18 and then we can hear from Mr. Pfundstein and from Counsel  
19 for the Public.

20 MR. WRIGHT: Sure. I'm Craig Wright,  
21 the Assistant Director for the Air Resources Division. We  
22 actually received the Application from Tennessee Gas  
23 Pipeline in January 31st, 2008. And, we sent them a  
24 completeness letter, which means we have everything we



1       need to review the Application, on February 29th, 2008.  
2       We've actually made a lot of progress since then. We've  
3       commenced our technical review. We've gone through the  
4       part of the process which generally takes the most amount  
5       of time, that's reviewing the Application, determining the  
6       technical requirements. We have completed our air  
7       dispersion modeling analysis part of the review. We've  
8       actually prepared the draft permit for internal drafts.  
9       So, we've actually made a lot of progress to date. And, I  
10      would suggest that, sitting hearing today, that we  
11      certainly wouldn't need until November 20th to prepare the  
12      draft permit conditions. So, we're essentially at that  
13      point now and ready to go public with those draft  
14      conditions, you know, within the next 15 to 20 days, if  
15      necessary.

16                   CHAIRMAN BURACK: Okay. Thank you. Any  
17      questions for Mr. Wright at this point from the Committee?

18                   (No verbal response)

19                   CHAIRMAN BURACK: Okay. Thank you.  
20      Mr. Stewart.

21                   DIR. STEWART: From the Water Division  
22      perspective, as was indicated earlier, a letter went out,  
23      which was a request for more information, on the Terrain  
24      Alteration Permit, June 3rd. As soon as we've gotten a

1       satisfactory response to the technical comments in that  
2       letter, I think we'd be ready to go. And, so that that  
3       should be able to occur in a fairly short and  
4       straightforward manner.

5                   CHAIRMAN BURACK: So, you're suggesting  
6       then that, once there are technical responses provided to  
7       these questions in the June 3rd letter, that within 30  
8       days thereafter the Department might be in a position to  
9       have a draft permit? Further comment?

10                  DIR. STEWART: Yes. Yes, I believe  
11       that's a reasonable time frame.

12                  CHAIRMAN BURACK: Okay. Thank you.  
13       Questions for Mr. Stewart at this point?

14                  (No verbal response)

15                  CHAIRMAN BURACK: Very good. Attorney  
16       Pfundstein, would you like to?

17                  MR. PFUNDSTEIN: Thank you, Mr.  
18       Chairman, members of the Committee. Initially, the  
19       Applicant would thank you for accepting its Application  
20       and allowing us to proceed with the process. From a  
21       scheduling perspective, we have a proposed in-service date  
22       of November of '09, which would be the heating season at  
23       the end of '09. In order to meet that in-service date,  
24       they would have to be in construction by April of '09. We

1 would very much like to wrap up all necessary approvals  
2 and permits as quickly as possible, because, as those of  
3 you on the Committee who have monitored construction of  
4 other projects under your certificate, something usually  
5 happens that takes longer than we anticipate from a  
6 construction perspective, once you start going. So, we  
7 would like to see a certificate from the Committee no  
8 later than year end. And, it's very encouraging to hear  
9 from Mr. Wright the status of the air permit, as well as  
10 from Director Stewart on what we can do to help expedite  
11 the draft permit conditions from a site-specific  
12 perspective. And, I can assure you, we'll do what we can  
13 to expedite it on our end. So, we'd like to get going as  
14 soon as possible. And, we'll do what we can to enable you  
15 to help us do that. Thank you, Mr. Chairman.

16 CHAIRMAN BURACK: Thank you. Are there  
17 questions for Attorney Pfundstein at this time?

18 (No verbal response)

19 CHAIRMAN BURACK: Mr. Stewart, I believe  
20 you mentioned this before, but I wonder could you just  
21 clarify for us. There was also an application for an  
22 onsite septic system for the facility in Pelham, and you  
23 indicated that has already, in fact, been issued by the  
24 Department, presumably consistent with statutory time

1 frames that apply to the processing of applications of  
2 that kind?

3 DIR. STEWART: Yes. The subsurface --  
4 the onsite wastewater system application was submitted,  
5 the application was received May 1st and was approved  
6 within a week of receipt, which is typical for subsurface,  
7 for smaller, it's a simple onsite wastewater system. So,  
8 it's approved and ready to go. Now, I believe that that  
9 permit, if you will, ultimately has to get folded into the  
10 EFSEC process, and that's why I noted that we kind of got  
11 out in front of the process by having that approval go  
12 out, but it's ready to roll.

13 CMSR. BELOW: So, is it possible to  
14 think about hearings in September or October? There are  
15 no other agencies that we need draft conditions -- oh, we  
16 haven't heard from public counsel yet. I'm sorry.

17 CHAIRMAN BURACK: I'm sorry. Mr. Roth.

18 MR. ROTH: Good afternoon. I guess the  
19 schedule that was presented by Attorney Iacopino is  
20 familiar, and I think would be workable, even consistent  
21 with the construction start date of April '09. I'd be a  
22 little bit hesitant or maybe more than a little bit  
23 hesitant to begin hearings on this in September or  
24 October, before we have draft conditions and permits from

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1 state agencies. I don't know how much time we're going to  
2 need for adjudicatory hearings, probably, you know, a day  
3 or two, and that's not an issue. But I think past  
4 experience is that there -- we may see people intervene,  
5 and that there will be a process by which information  
6 about the facility is shared with Counsel to the Public  
7 and with the various intervenors that may come out of the  
8 woodwork. And, that that process, while it looks neat, it  
9 takes time. And, to try to push that through before the  
10 end of the year, or certainly before September or October,  
11 I don't think is realistic or fair.

12 There's a bit of a disconnect between  
13 what -- I guess between the construction start date and  
14 wanting to have the certificate by the end of the year.  
15 There's a four-month gap there that I'm not sure, maybe  
16 there is a good explanation for that, but it seems to me  
17 that, if we have hearings in January and February, that  
18 should still give the Committee enough time to get a  
19 certificate out and then to begin the construction.

20 And, I will point out, as an aside, and  
21 it's based on the experience in the Lempster case, is that  
22 the Division of Historic & Cultural Resources is not  
23 present right now, and they have -- they may have a  
24 completely different view about how all this works and

1     what needs to be done. And, from the Lempster example,  
2     there was some surprises for people about that. And, I  
3     just don't know whether this schedule -- whether even this  
4     schedule is realistic with respect to what the Division of  
5     Historic & Cultural Resources has in mind.

6                     But, certainly, from my perspective,  
7     this schedule works all right. But pushing it all before  
8     the end of the year does not.

9                     CMSR. BELOW: Could I inquire?

10                    CHAIRMAN BURACK: Please do.

11                    CMSR. BELOW: Why, if, for instance, we  
12     had draft conditions and permits from state agencies, say,  
13     by the end of July, why would it be a problem to have  
14     hearings in the fall or early winter, before January?

15                    MR. ROTH: If you have the draft  
16     conditions by that kind of a date, I suppose that could  
17     work. But, right now, the deadline for those drafts is  
18     November 20th. So, if they held out until then, we would  
19     be conducting the analysis of the project somewhat in the  
20     dark.

21                    CMSR. BELOW: I hear what you're saying.  
22     I realize that's the draft on here. But I think what we  
23     just heard from the agencies is that one agency should be  
24     ready within a couple weeks with theirs, and the other is

1       within 30 days of getting a response, which sounds like it  
2       would likely be by the end of the summer, assuming they  
3       responded in the next few weeks. And, I think there's no  
4       other agencies that have draft conditions or permits that  
5       we know of, is that correct?

6                       CHAIRMAN BURACK: That is correct.

7                       MR. ROTH: Well, I'm not sure that's  
8       correct. There may be draft conditions to this permit, to  
9       this certificate, that other agencies might wish to bring  
10      forward. And, I thought that's what the draft conditions  
11      was about. So, that, for example, if Fish & Game  
12      discovered there's a rare salamander or something on one  
13      of these sites, and that needed protection, that's  
14      something that has to be dealt with. In addition,  
15      Historic & Cultural Resources, that may have their own.  
16      So, they're not represented, and they're not -- it's  
17      possible that they would all be in line by the end of July  
18      as well. But the "draft conditions" part of it is  
19      separate, obviously, from the permits themselves.

20                      CHAIRMAN BURACK: Ms. Ignatius.

21                      DIR. IGNATIUS: Mr. Chairman, I think I  
22      read it differently than Attorney Roth. I assume draft  
23      conditions the kind of things that the Committee members,  
24      and in the final order, any additional conditions that we

1     might impose are what grows out of the adjudicative  
2     hearings. They're not filed in advance of, because they  
3     might not be fully understood. But that what we're  
4     talking about here for draft conditions and permits are  
5     things that we know are required, such as Wetlands  
6     Permits, you know, Site Alteration Permits, that we know  
7     going into from the start will be necessary. And, that  
8     the agencies have said they're, based on work they have  
9     already done, they think it's possible to do within a few  
10    weeks to a month or a month and a half. It doesn't sound  
11    like very far out. I would push very hard for scheduling  
12    things earlier than later. Adjudicatory hearings in the  
13    fall seem completely appropriate to me, maybe even late  
14    summer, because we have no intervenors thus far, that may  
15    change, but so far we don't. We've had no response yet  
16    from any of the municipalities suggesting a concern, and  
17    again that could change. But you read what you see to  
18    start, and we know that thus far we don't see that kind of  
19    response.

20                   The things being proposed are more, as I  
21    see them, are more in the form of upgrades and expansions  
22    than -- to existing facilities, than to some entirely new  
23    facility and new technology. It just doesn't feel to me  
24    like something that needs to go the full distance. And, I



1 think we ought to be asking ourselves why we can't do it  
2 sooner than the full period. And, as I listened to all  
3 the discussions, I don't see it yet.

4 Now, it's incumbent on everyone to make  
5 sure they get real responses in, especially the Applicant.  
6 It is completely unfair for us to accelerate our schedule,  
7 and then get delays on the part of the person pushing for  
8 the acceleration. And, if that were the case, I would  
9 want to have the opportunity to change the schedule,  
10 extend it out as long as it takes, and -- or the option  
11 that you simply deny the Application because it's just not  
12 able to be completed in the time frame. But we can't get  
13 caught in the middle between the two. But that's, you  
14 know, I think we can manage that if we saw that that was  
15 beginning to creep up on us.

16 I think that this is a good opportunity  
17 to do the full case from beginning to end in far less than  
18 the statutory requirement. And, particularly, if we are  
19 going to be seeing new applications from other generators  
20 who are talking about applications, and they may not  
21 materialize, but we're hoping they do. If they start to  
22 be completed and filed with us, we're going to have a lot  
23 of work to do in other proceedings through the fall and  
24 next spring and summer. And, so, if this is one that we

1       can go through thoroughly, but on an expedited basis, I  
2       think we ought to make that happen.

3                     CHAIRMAN BURACK: Thank you. Mr. Getz.

4                     VICE CHAIRMAN GETZ: I'm just wondering,  
5       Mr. Chairman, as a procedural matter, similar to what  
6       Mr. Iacopino suggested earlier, that we, which we still  
7       need to do, is to take a vote on, to the extent it's  
8       required, and I think there's an issue about whether it  
9       is, but authorizing the Chair, as presiding officer, to  
10      issue an order on the finding of completeness today, that  
11      we also authorize, as a general matter, the Chair to  
12      handle all procedural matters and to set a hearing,  
13      possibly set a prehearing conference to be conducted by  
14      counsel. And that, out of that, to recommend a specific  
15      procedural schedule. I don't know if, Mr. Iacopino, do  
16      you have any thoughts on that general notion, that the  
17      Chair would issue an order setting a prehearing  
18      conference, and that there would be a specific proposal  
19      coming out of that?

20                    MR. IACOPINO: That would be fine.  
21       That's exactly how we proceeded in the last several of  
22       these types of cases.

23                    CHAIRMAN BURACK: Mr. Below, go ahead.

24                    CMSR. BELOW: In that context, does it

1       make any sense to try to go ahead with the public  
2       information hearings, since we have a tentative date, and  
3       that we have to go ahead and set, and have the prehearing  
4       conference shortly thereafter? Because that might draw  
5       out whether there's other parties that might want to  
6       intervene, that might -- that might want to have some say  
7       on the procedural schedule, once people know about the  
8       project in the community. And, if, after the public  
9       information hearings and the publicity that surrounds  
10      that, there isn't anybody, then that might help inform  
11      general counsel and the presiding officer as to what kind  
12      of time frames might be appropriate in that situation,  
13      depending on what the level of public interest is. That  
14      seems to make sense.

15                   CHAIRMAN BURACK: I'm seeing a lot of  
16      nodding heads in agreement. But, Mr. Iacopino.

17                   MR. IACOPINO: Well, the one thing that  
18      I would point out is that certainly I don't disagree with  
19      Mr. Roth that we may have, you know, intervenors that poke  
20      their heads out of the woodwork, so to speak, and file  
21      petitions to intervene. I would be more than happy to  
22      meet with the parties as they exist right now, to at least  
23      get the beginnings of the procedural schedule together.  
24      One good thing is, you know, we're going to issue another

1 notice for the public informational hearings. My  
2 suggestion to the Committee, to the Chairman, is going to  
3 be that we also have another deadline for intervention in  
4 there, so that every time we're going to publish something  
5 people know, if you want to intervene, here's the date  
6 that you have to do it, and maybe that helps flush them  
7 out. I mean, we can't change the Administrative  
8 Procedures Act, but we can at least continue to give  
9 people notice that, if you want to intervene, get a motion  
10 to intervene in.

11 So, I've got no problem with handling a  
12 prehearing conference with the parties as they exist  
13 today, and as they may exist in the future.

14 CHAIRMAN BURACK: Okay. Other thoughts  
15 or comments? Ms. Ignatius.

16 DIR. IGNATIUS: Two other that are a  
17 little unrelated, but -- to each other. On the question  
18 of Historical Resources, that was an issue, Mr. Roth is  
19 right, that that was an agency that is not a member of  
20 this Committee, but raised concerns in another case, and I  
21 don't think appreciated the importance of deadlines in the  
22 way that members of the Committee did. We addressed that  
23 to an extent in the rules by requiring a copy of the  
24 filing to go to Historic Resources from the start, I

1 believe. And, we ought to be certain that that's  
2 happened, and that they know that it's arrived. It may  
3 have been sent to them, but they may not know that it's  
4 there and that they have some real need to get to it  
5 quickly to evaluate. And, then, I think we need to  
6 impress on Historic Resources that, if they have concerns,  
7 they have got to voice them early on, and any orders we  
8 issue that tries to accommodate their concerns has some  
9 finality to it. I think we made a mistake in being very  
10 open-ended in some of our orders in a prior case that  
11 exacerbated the delay, that just the whole combination of  
12 their concerns and their lack of understanding of  
13 deadlines and our failure to put closure dates on any of  
14 their concerns may have just kind of added to a problem.

15 So, I think we ought to think about, as  
16 we go forward, making sure they know to get to it, voice  
17 their concerns, and we respond quickly and educate them.  
18 They're not members, they do not have a vote, but their  
19 input is important to the process.

20 MR. IACOPINO: May I just respond?

21 CHAIRMAN BURACK: Mr. Iacopino.

22 MR. IACOPINO: With all due respect to  
23 Historical Resources, one of the problems is I think they  
24 also, similar to the way the Department of Environmental

1 Services administer some federal laws, my understanding is  
2 the Department of Historical Resources also administer  
3 some federal laws through their statute. And, that's --  
4 at least that's my understanding of what caused the issues  
5 in the Lempster matter. They simply went along the  
6 schedule that they would normally use under the federal  
7 statute, and that I don't know that we're going to be able  
8 to change that by anything that we do. They have certain  
9 authority federally that we can't modify and we can't make  
10 them change. And, as far as I know, they don't have an  
11 actual permit or certificate or license of any sort that  
12 they actually issue. It's really, I think, more of an  
13 "enforce as you go" type of a process, as I understand it.  
14 Unlike, for instance, the Air Division, where, in their  
15 enforcement of the federal regulations, they actually have  
16 a process. In fact, they will actually have a federal  
17 hearing or a federal opportunity for hearing on the air  
18 permit. That has entirely different timelines than the  
19 Site Evaluation Committee. So, they have to do that to  
20 pursue their federal jurisdiction. And, unfortunately, I  
21 don't think that we can change or necessarily get them to  
22 abide by our deadlines, because of that federal  
23 jurisdiction that they have.

24 But, nonetheless, the Application

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1 indicates that the Applicant, in Section G, Attachment G,  
2 the third section of Attachment G in the Application,  
3 indicates that the Applicant has been working with the  
4 Department of Cultural Resources, Division of Historical  
5 Resources, State Historic Preservation Office, and has set  
6 up procedures for the unanticipated discovery of various  
7 remains or cultural resources during the course of the  
8 construction. So, I know that that doesn't mean that  
9 there won't be problems, but it certainly indicates that  
10 we have information contained in this Application  
11 regarding those issues. And, it certainly indicates that  
12 there's -- at least the Applicant has foreseen some  
13 issues, and is, after today's meeting, on very good  
14 notice, that there may be issues that arise through that  
15 particular agency.

16 And, of course, they always have the  
17 opportunity, even though they're not represented by a  
18 member of their agency on the Committee, they always have  
19 the opportunity to move to intervene or to otherwise  
20 simply provide information to us. We have always taken  
21 the information from any state agency or any federal  
22 agency for that matter.

23 CHAIRMAN BURACK: Before we turn to  
24 that, Ms. Ignatius, do you have a second matter you wish

1 to raise as well?

2 DIR. IGNATIUS: It's a different issue.  
3 So, why don't we continue if there's other questions on  
4 this.

5 CHAIRMAN BURACK: Okay.

6 DIR. IGNATIUS: Thank you.

7 CHAIRMAN BURACK: Go ahead.

8 VICE CHAIRMAN GETZ: I'll just make the  
9 administrative point, we can always put them on our  
10 service list to receive everything, to the extent they're  
11 not already there, we can take care of that, correct?

12 MR. IACOPINO: Yes. Yes, and I think  
13 they are. I'll have to double check that. I also believe  
14 that I sent a letter to them, along with orders to the  
15 other state agencies, back last month when we were  
16 scheduling this particular meeting.

17 CHAIRMAN BURACK: Mr. Bryce.

18 DIR. BRYCE: Mr. Chairman, I would just  
19 observe that Fish & Game sits on here and Natural Heritage  
20 is presented on here. Historic Resources is the only  
21 agency I can really think of that has information that has  
22 an impact on the Application that isn't a member of the  
23 Committee. So, to the extent that we can cover that in  
24 some other way, as was just mentioned, to get them in the



1       loop to move this along, I think that would be very  
2       helpful.

3                       CHAIRMAN BURACK:   Thank you.

4                       CMSR. BELOW:   I'll make a motion to  
5       authorize the Chair as the presiding officer to issue an  
6       acceptance order and to establish such procedural schedule  
7       and details as he deems appropriate.

8                       CHAIRMAN BURACK:   There's a motion.  Is  
9       there a second for that motion?

10                      MR. DUPEE:   Second.

11                      CHAIRMAN BURACK:   Is there a discussion  
12       of the motion?  Ms. Ignatius.

13                      DIR. IGNATIUS:   This was my other point.  
14       To just, in the making of a final procedural schedule,  
15       which I think is appropriate to do as part of a prehearing  
16       conference and working with the parties, that we insert  
17       dates for deliberations.  We seem to end up using a lot of  
18       time trying to find dates that will work for everyone.  
19       And, the closer they are, the harder it is, because  
20       people's schedules fill up.  So that, if we could  
21       anticipate one or two Committee sessions for deliberations  
22       and final review and finalization of an order or  
23       discussion of any conditions that come up, that we build  
24       that into the schedule at the start will help.  If we

1 don't need it, we can always just take them off the list.  
2 But it's when we're down to the wire and looking for  
3 something a week or two out, nothing works --

4 CMSR. BELOW: Right.

5 DIR. IGNATIUS: -- for a quorum, and we  
6 end up spending a lot of time searching for dates.

7 CHAIRMAN BURACK: Thank you. That's a  
8 very constructive suggestion. Other comments or thoughts,  
9 before we take this vote on the motion? And, again, this  
10 is a motion that would authorize the Chair to issue an  
11 order related to the Application's acceptance and also  
12 setting a proposed procedural schedule as appropriate for  
13 the matter.

14 CMSR. BELOW: Do we need to say anything  
15 about the informational hearings? Do we need to -- can  
16 the Chair set that within that motion?

17 MR. IACOPINO: Yes, I can think he can  
18 sign for notices.

19 CMSR. BELOW: One or more notices.  
20 Okay. Fine.

21 CHAIRMAN BURACK: Okay. Is there any  
22 further discussion?

23 (No verbal response)

24 CHAIRMAN BURACK: If not, are we ready

1 for a vote? All in favor, signify by saying "aye"?

2 (Multiple members indicating "aye".)

3 CHAIRMAN BURACK: Opposed?

4 (No verbal response)

5 CHAIRMAN BURACK: Abstentions?

6 (No verbal response)

7 CHAIRMAN BURACK: Very good. Thank you.

8 The motion carries. We will -- I will work to get a  
9 procedural schedule out, which will, I think, based on the  
10 discussion we've had here today, likely include an initial  
11 prehearing conference to see if we can establish some  
12 basic parameters for a potential schedule. We'll include  
13 public information hearings in the two locations on  
14 July 17, as Attorney Iacopino outlined. With a follow-up  
15 prehearing conference, once we have ascertained whether  
16 there are going to be any additional intervenors in the  
17 matter. And, that will allow us to then, I think with a  
18 considerable degree of confidence, set a schedule for the  
19 remaining procedural aspects of this matter that we hope  
20 will be able to accommodate all of the issues, needs, and  
21 concerns that may be out there. Okay.

22 Do we have anything further, counsel,  
23 with respect to this matter that we should take up at this  
24 time?

1                   MR. IACOPINO: No. I will prepare for  
2     you proposed orders doing exactly what you just said, as  
3     well as orders of notice, which, for the Applicant's  
4     benefit, are going to have to be filed relatively quickly  
5     after they're issued -- are going to have to be published  
6     relatively quickly after they're issued, because we have  
7     to give 14 days notice before the 17th.

8                   MR. PFUNDSTEIN: We're getting pretty  
9     good at it.

10                  MR. IACOPINO: Figured you would be.

11                  CHAIRMAN BURACK: Thank you, Attorney  
12     Pfundstein. Okay. If there's nothing further on this  
13     matter then, we will close our consideration of this  
14     docket at this time. And, I would suggest that the  
15     Committee take a recess until we're able to ascertain the  
16     schedule of Ms. Amidon in getting back from Office of  
17     Legislative Services, to see if we can have a vote on the  
18     final adoption of new rules before we adjourn for the day.  
19     So, we will proceed in that fashion.

20                  CMSR. BELOW: Don't go far.

21                  CHAIRMAN BURACK: Thank you all.

22                         (Recess taken at 2:49 p.m. and the  
23     meeting reconvened at 3:06 p.m.)

24                  CHAIRMAN BURACK: Okay. We are going to

1       recommence our meeting here, returning to our first agenda  
2       item that relates to the adoption of new Organizational  
3       and Procedural Administrative Rules. And, I'm going to  
4       turn things over to Commissioner Below for an update on  
5       the status here.

6                       CMSR. BELOW: Well, we have received two  
7       letters from the Office of Legislative Services signed by  
8       the Administrative Rules Director and the Director Carol  
9       Holahan. And, they state that as of today they received  
10      our Amended Final Proposal, and that it was amended in  
11      accordance with the conditional approval, and we are now  
12      authorized to adopt and file the rules for both Site 100,  
13      and Site 200 and 300. So, I would move that the Committee  
14      adopt our Final Proposal as amended for the Site 100  
15      Organizational Rules, as well as the Site 200, Rules on  
16      Practice and Procedure, and the Site 300 Rules on  
17      Application Rules.

18                   CHAIRMAN BURACK: Is there a second to  
19      that motion? Mr. Stewart seconded the motion. And,  
20      again, what we're doing now is finally adopting these  
21      under one motion, and not separated into two motions, is  
22      what's been proposed. Okay. Is there any discussion of  
23      the motion?

24                   (No verbal response)

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1 CHAIRMAN BURACK: Hearing none, all in  
2 favor?

3 (Multiple members indicating "aye".)

4 CHAIRMAN BURACK: Opposed?

5 (No verbal response)

6 CHAIRMAN BURACK: Abstentions?

7 (No verbal response)

8 CHAIRMAN BURACK: Very good.

9 Congratulations. We have officially adopted new rules.  
10 And, again, I want to --

11 CMSR. BELOW: It's the only rules we've  
12 ever adopted.

13 CHAIRMAN BURACK: And, I want to, again,  
14 on behalf of the entire Committee, express our  
15 appreciation to Chairman Getz, Commissioner Below, Suzanne  
16 Amidon, Amy Ignatius, Michael Walls, from Department of  
17 Environmental Services, and everyone who has spent many,  
18 many hours working to develop these rules. And, I think  
19 it's been time very well spent, because I certainly think  
20 we all anticipate that we're going to see many more  
21 applications in the future.

22 So, is there any other new business or  
23 old business to come before the Committee at this time?

24 (No verbal response)

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1 CHAIRMAN BURACK: Seeing and hearing  
2 none, is there a motion to adjourn?

3 DIR. IGNATIUS: Move we adjourn.

4 CHAIRMAN BURACK: Moved by Ms. Ignatius.  
5 Second?

6 MR. DUPEE: Second.

7 CHAIRMAN BURACK: Second by Mr. Dupee.

8 All in favor?

9 (Multiple members indicating "aye".)

10 CHAIRMAN BURACK: We stand adjourned.

11 (Whereupon the meeting was adjourned at  
12 3:09 p.m.)

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